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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,536	02/19/2004	Daniel P. Shannon	035496-9002-01	3255
23409	7590	05/04/2006	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/782,536

Applicant(s)

SHANNON, DANIEL P.

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07Mar05, 17Sep04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, drawn to method of vacuum sealing a storage bag, classified in class 53, subclass 434.
- II. Claims 7-10, drawn to method of making a storage bag, classified in class 493, subclass 189.
- III. Claims 11-16, drawn to a vacuum storage bag, classified in class 206, subclass 524.8.
- IV. Claims 17-20, drawn to tubestock bag material, classified in class 428, subclass 35.2.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the process for using the product as claimed can be practiced with

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another materially different product such as a product where the pad is not coupled to at least one of the first and second panels.

Inventions II and III are related as process of making and process made. The inventions are distinct if either or both of the following can be that the process as claimed can be used to make other and materially different product or that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). In the instant case the product can be made by a different process, such as one without first forming a tube.

Inventions II and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be that the process as claimed can be used to make other and materially different product or that the product as claimed can be made by another and materially different process (MPEP 806.05(f)). In the instant case the process can make a different product such as a conduit.

Inventions III and IV are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven in this relationship if the intermediate product is useful to make other than the final product (MPEP 806.04(b), paragraph), and the species are patentably distinct (MPEP 806.04(h)). In the instant case, the intermediate product is deemed to be useful

to make another final product, such as a conduit, and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection of the other invention.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Chris Austin on 20 April 2006 a provisional election was made without traverse to prosecute the invention of Group III, claims 11-16. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 and 17-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

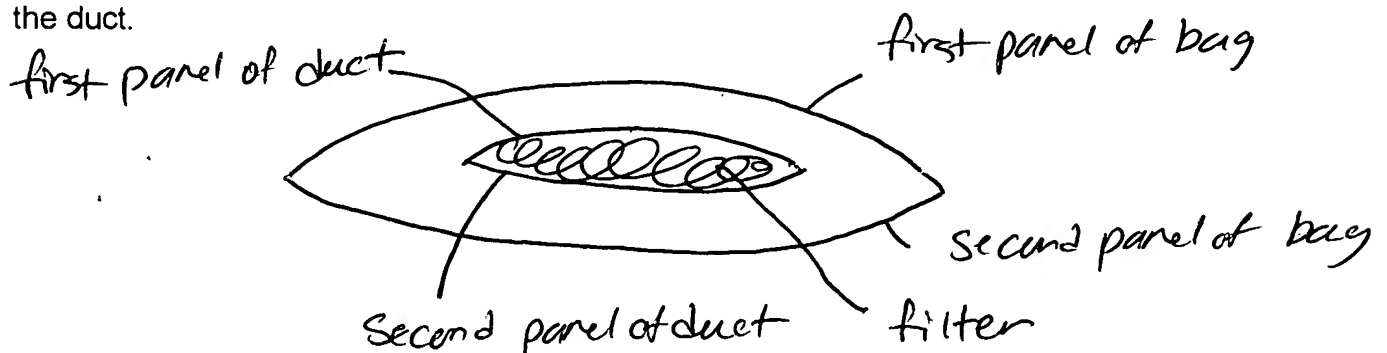
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Xiong et al. US 6,550,223.

Xiong in col 4 lines 30-36 describes the pad of fluid absorbing material (the filter) disposed within two strips (the duct), both of which comprise his “fusible duct.” The fusible duct is couple to both panels during the heat sealing.

Re claim 12, as was explained to Mr. Austin during the telephone restriction of 20 April 2006, Xiong also meets this claim by virtue of the filter material, which establishes fluid communication between the interior of the plastic bag and the exterior of the plastic bag. The fluid passages are within the filter, and thus are between a first panel of the strip (a “first panel” of the duct) and at least one of the first and second panels. More specifically, in the drawing below, note that the fluid passage within the filter is between the first panel of the bag and the second panel of the duct, and similarly the fluid passage within the filter is between the second panel of the bag and the first panel of the duct.



Re claim 16, the filter would fill the entire duct and thus meet this claim.

It is recognized that Xiong does not disclose a textured strip, nor would a textured strip be an obvious modification to his invention, as the fluid flow is within the interior of the fusible duct, specifically through the filter material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ 

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700